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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 12, 32, and 52**

**[FAR Case 2012-031; Docket 2012-0031, Sequence 1]**

**RIN 9000-AM37**

**Federal Acquisition Regulation; Accelerated Payments to  
Small Business Subcontractors**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the temporary policy provided by Office of Management and Budget (OMB) Policy Memorandum M-12-16, dated July 11, 2012, by adding a new clause to provide for the accelerated payments to small business subcontractors.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the Federal Register]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012-031 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2012-031". Select the link "Submit a Comment" that corresponds with FAR Case 2012-031. Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-031" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7<sup>th</sup> Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR case 2012-031, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov> , including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2012-031.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are proposing to revise the FAR to implement a temporary policy that will provide for the acceleration of payments to small business subcontractors. On July 11, 2012, OMB released Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, that outlined steps agencies shall take to ensure that prime contractors pay their small business subcontractors as promptly as possible. The temporary OMB policy of accelerating payments ends on July 10, 2013.

## **II. Discussion and Analysis**

The proposed rule establishes a new FAR clause at 52.232-XX, Providing Accelerated Payments to Small Business Subcontractors, which will require the prime contractor, upon receipt of accelerated payments from the Government, to make accelerated payments to small business subcontractors, to the maximum extent practicable, after receipt of a proper invoice and all proper documentation from small business subcontractors. The clause will be inserted into all new solicitations issued after the effective date of the final rule and resultant contracts, including solicitations and contracts for the acquisition of commercial items. This proposed rule does not provide any new rights under the Prompt Payment Act and does not

affect the application of the Prompt Payment Act late payment interest provisions.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because small business subcontractors should be paid more expeditiously by their prime contractors, improving small business cash flow overall. Therefore, an Initial

Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

This proposed rule implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012, which is designed to accelerate payment from Federal contractors to their small business subcontractors. The rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012-031) in correspondence.

## **V. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35).

**List of Subjects in 48 CFR Parts 12, 32, and 52**

Government procurement.

Dated: December 14, 2012

LAURA AULETTA,  
Director,  
Office of Governmentwide  
Acquisition Policy,  
Office of Acquisition Policy  
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 12, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 32, and 52 are revised or continue to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; 42 U.S.C. 2473(c); and 51 U.S.C. 20113.

#### **PART 12-ACQUISITION OF COMMERCIAL ITEMS**

2. Amend section 12.301 by adding paragraph (d)(4) to read as follows:

**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items**

\* \* \* \* \*

(d) \* \* \*

(4) Insert the clause at 52.232-XX, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009-2.

\* \* \* \* \*

#### **PART 32-CONTRACT FINANCING**

##### **32.002 [Amended]**

3. Amend section 32.002 by removing from paragraph (a)(1) "32.005" and adding "32.009" in its place.

4. Add section 32.009 to read as follows:

**32.009 Providing accelerated payments to small business subcontractors.**

**32.009-1 General.**

Pursuant to the policy provided by OMB Memorandum M-12-16, Agencies shall take measures to ensure that prime contractors pay small business subcontractors on an accelerated timetable to the maximum extent practicable, and upon receipt of accelerated payments from the Government. This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

**32.009-2 Contract clause.**

Insert clause 52.232-XX, Providing Accelerated Payments to Small Business Subcontractors, in all solicitations and contracts.

**PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Amend section 52.213-4 by-

- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(2)(v) through (vii) as paragraphs (a)(2)(vi) through (viii), respectively; and
- c. Adding a new paragraph (a)(2)(v).

The revision and addition read as follows:

**52.213-4 Terms and Conditions-Simplified Acquisitions  
(Other Than Commercial Items).**

\* \* \* \* \*



TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL  
ITEMS) (DATE)

(a) \* \* \*

(2) \* \* \*

(v) 52.232-XX, Providing Accelerated Payments to  
Small Business Subcontractors (DATE).

\* \* \* \* \*

6. Add section 52.232-XX to read as follows:

**52.232-XX Providing Accelerated Payments to Small Business  
Subcontractors.**

As prescribed in 32.009-2, insert the following  
clause:

PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DATE)

(a) Upon receipt of accelerated payments from the  
Government, the Contractor shall make accelerated payments  
to a small business subcontractor, to the maximum extent  
practicable and prior to when such payment is otherwise  
required under the applicable contract or subcontract,  
after receipt of a proper invoice and all other required  
documentation from the small business subcontractor.

(b) The acceleration of payments under this clause  
does not provide any new rights under the Prompt Payment  
Act.

(c) Include the substance of this clause, including  
this paragraph (c), in all subcontracts with small business  
concerns, including subcontracts with small business  
concerns for the acquisition of commercial items.

(End of Clause)

[BILLING CODE 6820-EP]

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